

House File 2505 - Introduced

HOUSE FILE 2505
BY COMMITTEE ON ENVIRONMENTAL
PROTECTION

(SUCCESSOR TO HSB 703)

A BILL FOR

1 An Act providing for the application of pesticides by
2 commercial applicators using an aircraft, providing
3 penalties, and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 206.2, Code 2009, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 2A. "*Aircraft*" means the same as defined
4 in section 328.1.

5 Sec. 2. Section 206.6, subsection 5, paragraph c, Code
6 Supplement 2009, is amended to read as follows:

7 c. The secretary shall issue a commercial applicator
8 license limited to the classifications for which the applicant
9 is qualified, which shall expire at the end of the calendar
10 year of issue unless it has been revoked or suspended by the
11 secretary for cause.

12 d. The secretary may limit the license of the applicant
13 to the use of certain pesticides, or to certain areas, or
14 to certain types of equipment if the applicant is only so
15 qualified. If a license is not issued as applied for, the
16 secretary shall inform the applicant in writing of the reasons.

17 e. The secretary shall revoke the license of a commercial
18 applicator who on more than two occasions applies pesticides
19 using an aircraft in a manner that causes personal injury in
20 violation of this chapter pursuant to section 206.19.

21 Sec. 3. NEW SECTION. **206.14A Personal injuries from**
22 **pesticides applied from an aircraft.**

23 The department shall provide a special form for persons
24 to submit a statement claiming that they were injured by
25 pesticides applied by a commercial applicator using an
26 aircraft.

27 1. The special form may be part of the form provided in
28 section 206.14, so long as the special form complies with the
29 requirements of this section. The department may also require
30 that a claimant file a statement under this section in lieu of
31 section 206.14.

32 a. Except as otherwise provided in this section, the
33 department may require that the statement include the same
34 information, and be filed in the same manner and according to
35 the same procedures required for a statement filed pursuant to

1 section 206.14.

2 *b.* The department shall make the form available in an
3 electronic format, including via the internet. The department
4 shall provide for authentication of statements filed with the
5 department, including electronic signatures as provided in
6 chapter 554D. The statement must be filed with the department
7 within sixty days after the date that injury is claimed to have
8 occurred. The statement may refer to evidence substantiating
9 the claim including information identifying the commercial
10 applicator or aircraft, medical documents indicating injuries
11 consistent with pesticide exposure, and media images or sounds
12 that record the exposure or the consequences of the exposure.

13 2. Upon receipt of a statement, the department shall notify
14 the commercial applicator. If warranted, the department shall
15 conduct an investigation to determine if the injuries were
16 caused by the application of a pesticide in violation of this
17 chapter. The department shall provide the results of the
18 investigation to the claimant and the commercial applicator.
19 The department may provide the results to any person entitled
20 to receive such results if the claim was also filed under
21 section 206.14.

22 3. A person's failure to file a report shall not affect any
23 of the following:

24 *a.* A legal action to obtain damages or injunctive relief.

25 *b.* Any limitations of actions provided in chapter 614.

26 *c.* An administrative, civil, or criminal action initiated
27 by the state.

28 4. The filing of a statement or the failure to file a
29 statement is not a violation of this chapter.

30 5. The department may postpone a contested case proceeding
31 until the department has conducted its investigation and
32 released the results.

33 6. As part of the department's investigation, the
34 claimant is not required to submit to a physical examination.
35 Notwithstanding section 206.14, a commercial applicator or a

1 representative of a commercial applicator is not entitled to
2 enter the property where the claim arose.

3 7. The department may provide the results of its
4 investigation to the Iowa department of public health as a
5 reportable poisoning pursuant to section 139A.21.

6 Sec. 4. Section 206.19, subsection 5, paragraph b, Code
7 Supplement 2009, is amended to read as follows:

8 b. The Except as provided in paragraph "c", the amount of
9 the civil penalty shall not exceed five hundred dollars for
10 each offense.

11 c. A commercial applicator who operates an aircraft to apply
12 a pesticide shall be assessed an enhanced civil penalty for
13 each violation of this chapter that causes personal injury.
14 The amount of the enhanced civil penalty increases based
15 on whether the violation occurs during a first, second, or
16 subsequent occasion in which the commercial applicator operates
17 the aircraft.

18 (1) The amount of the enhanced civil penalty is as follows:

19 (a) For the first occasion, not more than one thousand
20 dollars per violation.

21 (b) For the second occasion, not more than one thousand five
22 hundred dollars per violation.

23 (c) For the third or subsequent occasion, not more than two
24 thousand dollars per violation.

25 (2) The department shall issue a written warning to a
26 commercial applicator who is subject to the enhanced civil
27 penalty. For a violation occurring during a first or second
28 occasion the department shall warn the commercial applicator of
29 the maximum enhanced civil penalty assessable for a violation
30 occurring during a subsequent occasion. For a violation
31 occurring during a second occasion, the department shall warn
32 the commercial applicator that the commercial applicator's
33 license will be revoked for a violation occurring during a
34 third occasion. The failure of the department to issue a
35 written notice to a commercial applicator is not grounds for

1 contesting the department's decision.

2 Sec. 5. Section 206.22, Code 2009, is amended by adding the
3 following new subsection:

4 NEW SUBSECTION. 2A. A commercial applicator who
5 negligently applies pesticides by using an aircraft in a manner
6 that causes personal injury is guilty of a serious misdemeanor
7 for the first offense and an aggravated misdemeanor for each
8 subsequent offense.

9 Sec. 6. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
10 immediate importance, takes effect upon enactment.

11 EXPLANATION

12 GENERAL. This bill amends the Pesticide Act of Iowa codified
13 in Code chapter 206, by providing for personal injury caused
14 by a commercial applicator who applies pesticides using an
15 aircraft. The term "pesticide" is broadly defined to include
16 any substance intended for preventing, destroying, repelling,
17 or mitigating insects, rodents, nematodes, fungi, weeds, and
18 other forms of plant or animal life (Code section 206.2).

19 REPORTING. The bill requires that persons claiming an
20 injury caused by a commercial applicator's aerial application
21 of pesticides may file a statement with the department. The
22 department may model the statement's form and filing procedures
23 after a similar statement used for reporting damages to
24 property and especially crops caused by pesticide application
25 (Code section 206.14). The bill requires the department to
26 make such statements available on the internet. The statement
27 may be used by the department to conduct an investigation and
28 an enforcement action.

29 CIVIL PENALTIES. Generally, a person who violates a
30 provision of Code chapter 206 is subject to a civil penalty of
31 not more than \$500 (Code section 206.19). This bill creates
32 enhanced civil penalties for personal injury caused by a
33 commercial applicator's aerial application. The amount of the
34 enhanced civil penalty increases based on whether the violation
35 occurs during a first, second, or subsequent occasion in which

1 the commercial applicator operates the aircraft. The maximum
2 amount of the enhanced civil penalty is \$1,000 per violation
3 for the first occasion, \$1,500 per violation for the second
4 occasion, and \$2,000 per violation for the third or subsequent
5 occasion. The bill also requires the department to issue
6 a written warning to the violator on each occasion stating
7 penalties applicable for the next violation.

8 LICENSE REVOCATION. The department is required to revoke
9 the license of a commercial applicator who on more than two
10 occasions applies pesticides using an aircraft that causes
11 personal injury.

12 CRIMINAL PENALTIES. The bill provides that a commercial
13 applicator who negligently applies pesticides by using an
14 aircraft in a manner that causes personal injury is guilty of
15 a serious misdemeanor for the first offense and an aggravated
16 misdemeanor for each subsequent offense (Code section 206.22).
17 A serious misdemeanor is punishable by confinement for no more
18 than one year and a fine of at least \$315 but not more than
19 \$1,875. An aggravated misdemeanor is punishable by confinement
20 for no more than two years and a fine of at least \$625 but not
21 more than \$6,250.

22 EFFECTIVE DATE. The bill takes effect upon enactment.